

ACUITY,	)	<b>United States District Court</b>
A MUTUAL INSURANCE COMPANY	)	<b>Northern District of Illinois</b>
2800 S. Taylor Drive	)	
Sheboygan, WI 53081	)	
	)	
Plaintiff	)	<b>Case Number: 18-cv-4133</b>
v.	)	
	)	
	)	
JOSCO CONSTRUCTION SERVICES, INC.	)	
2551 Division Street	)	
Joliet, IL 60435	)	
	)	
Defendant	)	

### **COMPLAINT**

As its complaint against the defendant, Josco Construction Services, Inc. (“Josco”), plaintiff, Acuity, A Mutual Insurance Company (“Acuity”), alleges as follows:

### **PARTIES**

1. Acuity is an insurance company incorporated under the laws of Wisconsin, with its principal place of business located at 2800 S. Taylor Drive, Sheboygan, Wisconsin 53081.
2. Josco is a utility contractor incorporated under the laws of Illinois, with its principal place of business located at 2551 Division Street, Joliet, Illinois 60435.

### **JURISDICTION AND VENUE**

3. Jurisdiction is proper in this Court under 28 U.S.C. §1332(a)(1). Complete diversity of citizenship exists between the parties, and the amount in controversy involves, exclusive of interest and costs, sums exceeding \$75,000.00.
4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), because defendant Josco resides in this District.

### CLAIM FOR RELIEF

5. Josco purchased general liability and workers' compensation insurance from Acuity (among various other insurance coverages) for a policy period beginning on July 13, 2016, and expiring on July 13, 2017.

6. Acuity issued the contract of insurance, Policy Number X47669, to Josco providing the general liability and workers' compensation coverage requested by Josco.

7. The premiums for the general liability and workers' compensation coverage included in Policy Number X47669 were based on Josco's estimated annual payroll and assumed risks for the specified policy period. Josco's premiums were derived from the projected payroll information Josco provided to Acuity at the inception of the policy. Under the terms of the policy, Acuity reserved the right to audit Josco's records and retroactively adjust the premiums due based on later obtained information concerning Josco's employees and the risk exposure they presented.

8. In September and November 2017, Acuity exercised its right under Policy Number X47669 to conduct audits for the policy period to determine Josco's actual risk exposure while the policy was in effect. Those audits resulted in additional earned premiums of \$79,242.00 and \$106,699.00, respectively, for Josco's general liability and workers' compensation coverage for the policy period. True copies of the September 8, 2017, Audit Reports pertaining to Josco's general liability and workers' compensation coverage for the policy period are attached as **Exhibits 1 and 2**, respectively. True copies of the November 1, 2017, Revised Audit Reports pertaining to Josco's general liability and workers' compensation coverage for the policy period are attached as **Exhibits 3 and 4**, respectively.

9. After all payments, credits and additional premiums from the audits were properly applied to the account pursuant to the terms of Policy Number X47669, the balance due and owing on Josco's account with Acuity equals \$92,970.50, exclusive of interest and costs. A true copy of Josco's Account Summary reflecting the balance due is attached as **Exhibit 5**.

10. Acuity billed Josco for the additional premiums due and has duly demanded payment from Josco, but Josco has failed to pay in full the balance owing under the policy.

11. As a direct and proximate result of the material breach of the policy by Josco for failing to pay the premiums due, Acuity has suffered damage in the principal sum of \$92,970.50.

12. Acuity has complied with all conditions precedent to its right of recovery herein.

**WHEREFORE**, Acuity demands judgment against Josco as follows:

- a) Compensatory damages in the amount of \$92,970.50;
- b) Interest, attorney's fees, and expenses as allowed by law;
- c) Its costs and disbursements as allowed by law; and
- d) Such other relief as the Court deems just and proper.

Dated this 13<sup>th</sup> day of June 2018.

s/ Zach S. Whitney  
Zach S. Whitney  
KOHNER, MANN & KAILAS, S.C.  
Washington Building  
Barnabas Business Center  
4650 N. Port Washington Road  
Milwaukee, WI 53212-1059  
Telephone: (414) 962-5110  
Facsimile: (414) 962-8725  
zwhitney@kmksc.com  
*Attorneys for Acuity*